



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Blue Ridge Regional Office

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**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - SPECIAL ORDER BY CONSENT
ISSUED TO
ROCKYDALE QUARRIES CORPORATION
FOR THE
JACK'S MOUNTAIN QUARRY
REGISTRATION NO. 30856**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1309 and 10.1-1316 between the State Air Pollution Control Board and Rockydale Quarries Corporation, for the purpose of resolving certain violations of Virginia Air Pollution Control Law and Regulations for the Control and Abatement of Air Pollution, that occurred at the Jack's Mountain Quarry.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1301 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.
6. "Rockydale" means Rockydale Quarries Corporation, a Virginia corporation certified to do

business in Virginia in 1932, and the owner of Jack’s Mountain Quarry located in Franklin County, Virginia. Rockydale is assigned Federal Identification Number 54-0362190.

7. “Facility” means the Jack’s Mountain Quarry located in Franklin County, Virginia, which is permitted to operate under DEQ registration number 30856 issued in 2005.
8. “BRRO” means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
9. “Regulations” mean the Virginia Regulations for the Control and Abatement of Air Pollution, located in the Virginia Administrative Code (“VAC”) 9 VAC 5-10-10 *et seq.*
10. “Virginia Air Pollution Control Law” means the laws located in the Code § 10.1-1300 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

1. Rockydale Quarries Corporation owns and operates the Jack’s Mountain Quarry located in Franklin County, Virginia. The Facility operates under a Permit to Modify and Operate which was issued December 8, 2005, under registration number 30856.
2. On April 10, 2008, Department compliance staff arrived at the Facility to conduct a compliance inspection of the Portable Wash Plant. The Portable Wash Plant is operated under registration number 21384 and is a separate facility currently collocated at the Facility.
3. During the inspection of the Portable Wash Plant, excess visible emissions were observed by Department compliance staff originating from the permitted primary jaw crusher of the Facility. The observed emissions were in the range of 30 – 50 percent opacity. At the time that these observations were being made, it appeared that water suppression was not being applied to the primary jaw crusher.
4. The plant foreman checked with the crusher operator to determine what the problem was with the water suppression for the primary jaw crusher. Under normal conditions, the water suppression system works while the crusher is in operation and while the crusher is idle, which occurs during the loading of rocks. The plant foreman verified that the crusher operator had turned the water suppression off in the interim periods between the loadings of rock into the primary jaw crusher but then failed to turn the water suppression back on once the primary jaw crusher resumed crushing rock.
5. After the wet suppression system was turned back on, Department compliance staff verified that the wet suppression was operating properly and the visible emissions from the primary jaw crusher were now within the permitted limit. This resolved this area of non-compliance.
6. As a result of the inspection, the Department issued a Notice of Violation (“NOV”) to Rockydale on April 15, 2008, citing the following violations.
7. Inspection results indicate that Rockydale is in apparent violation of condition No. 9 of the December 8, 2005, Permit to Modify and Operate which states that, “Visible emissions from

the primary and secondary crushing shall not exceed fifteen percent (15%) opacity as determined by EPA Method 9 (reference 40 CFR 60, Appendix A).”

8. Inspection results indicate that Rockydale is in apparent violation of condition No. 3 of the December 8, 2005, Permit to Modify and Operate which states in part that, “Unless otherwise specified, dust emission controls shall include the following or equivalent at a minimum: Dust from drills, shot piles, material handling, screens, crushers, load-outs and traffic areas shall be controlled by wet suppression or equivalent (as approved by the DEQ). The wet suppression spray systems shall be operated at optimum design, and pressure gauges shall be installed (with adequate access for inspection of the measuring device) to indicate system operating pressures.”
9. In order to resolve these violations, Rockydale has agreed to pay a civil penalty, as required in Section D of this Order, and to perform the SEP, as described in Appendix A of this Order.

SECTION D: Agreement and Order

By virtue of the authority granted it pursuant to Va. Code §§ 10.1-1309 and 10.1-1316 and upon consideration of Va. Code § 10.1-1186.2, the Board orders Rockydale, and Rockydale agrees to perform the actions described below and in Appendix A of this Order. In addition, the Board orders Rockydale, and Rockydale voluntarily agrees to pay a civil charge of Eight Thousand Three Hundred Dollars (\$8,300.00) in settlement of the violations cited in this Order.

1. Rockdale shall pay TWO THOUSAND SEVENTY-FIVE DOLLARS (\$2,075.00) of the civil charge within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the “Treasurer of Virginia,” delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The payment shall include Rockydale’s Federal Identification Numbers (FIN) and shall state either on a transmittal letter or as a notation on the check or money order that the payment is submitted pursuant to this Order.

2. Rockydale shall satisfy SIX THOUSAND TWO HUNDRED TWENTY-FIVE DOLLARS (\$6,225) of the civil charge upon completing the Supplemental Environmental Projects (“SEPs”) described in Appendix A of this Order.
3. The net project cost of the SEPs to Rockydale shall not be less than the amount set forth in Paragraph D.2. If it is, Rockydale shall pay the remaining amount in accordance with Paragraph D. 1 of this Order, unless otherwise agreed to by the Department. “Net project costs” means the net present after-tax cost of the SEP, including tax savings, grants and first-

year operation cost reductions or other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive identifiable tax savings (*e.g.*, tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.

4. By signing this Order Rockydale certifies that they have not commenced performance of the SEPs before DEQ identified the violations in this Order and approved the SEPs.
5. Rockydale acknowledges that it is solely responsible for completing the SEP projects. Any transfer of funds, tasks, or otherwise by Rockydale to a third party, shall not relieve Rockydale of its responsibility to complete the SEPs as contained in this Order.
6. In the event it publicizes the SEP or the SEP results, Rockydale shall state in a prominent manner that the projects are part of a settlement for an enforcement action.
7. The Department has the sole discretion to:
 - a. Authorize any alternate SEP proposed by Rockydale; and
 - b. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
8. Should the Department determine that Rockydale has not completed the SEPs, or the authorized alternate SEPs, in a satisfactory manner; the Department shall so notify Rockydale in writing. Within 30 days of being notified, Rockydale shall either complete the SEPs or the authorized alternative SEPs in a satisfactory manner or pay the amount specified in Paragraph 2 above as provided in Paragraph 1 above.

SECTION E: Administrative Provisions

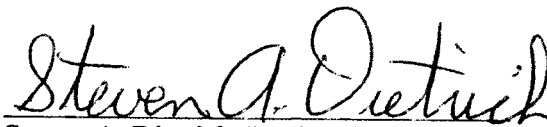
1. The Board may modify, rewrite, or amend this Order with the consent of Rockydale, for good cause shown by Rockydale, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (a) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (b) seeking subsequent remediation of the Site as may be authorized by law; or (c) taking subsequent action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Rockydale admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Rockydale consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Rockydale declares that it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.* and the Virginia Air Pollution Control Law, and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and agrees to waive any objection to, or appeal from, the entry of this Order. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Rockydale to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Rockydale shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Rockydale shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Rockydale shall notify the BRRO Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth: (a) the reasons for the delay or noncompliance; (b) the projected duration of any such delay or noncompliance; (c) the measures taken and to be taken to prevent or minimize such delay or noncompliance; and (d) the timetable by which such measures will be implemented and the date full compliance will be achieved. Failure to so notify the BRRO Regional Director in writing within twenty-four hours of learning of any condition above, which Rockydale intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Rockydale. This Order shall continue in effect until: a) Rockydale petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of this Order, b) the Director or Board terminates the Order in his or its sole discretion upon 30 days notice to Rockydale, whichever occurs earlier. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Rockydale from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement

otherwise applicable.

11. The undersigned representative of Rockydale certifies that he or she is authorized to enter into the terms and conditions of this Order and to execute and legally bind Rockydale to this document. Any documents to be submitted pursuant to this Order shall also be submitted by Rockydale or an individual authorized by Rockydale.
12. By the signature of the authorized official below, Rockydale Quarries Corporation voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 25th day of November, 2008.



Steven A. Dietrich, Regional Director
Blue Ridge Regional Office
Department of Environmental Quality


Rockydale Quarries Corporation voluntarily agrees to the issuance of this Order.

By: 
Mr. Daniel H. Phlegar, President

Commonwealth of Virginia

City/County of Roanoke

The foregoing document was signed and acknowledged before me this 26th day of November, 2008, by Mr. Daniel H. Phlegar, on behalf of Rockydale Quarries Corporation.


Notary Public

My commission expires: January 31, 2012

Registration No. 165511

APPENDIX A – Supplemental Environmental Projects (“SEPs”)

Rockydale shall perform the SEPs identified below in the manner specified in this Appendix.

1. The SEPs to be performed by Rockydale are as follows:
 - a. Installation of additional wet suppression before the primary crusher at Jack’s Mountain Quarry.
 - b. Installation of controls for the existing wet suppression that is located after the primary crusher as well as the newly installed wet suppression so that both wet suppression devices can be controlled and monitored from the facility’s central control booth.
 - c. Purchase of a street cleaning broom and tractor. The broom/tractor will be used at Rockydale’s facility in Roanoke, Virginia. The purpose will be to clean all paved services on Rockydale’s property and work to reduce particulate emissions from road dust.
2. The SEPs shall be completed within 12 months of the effective date of the Order.
3. Rockydale shall submit progress reports on the SEPs on a semi annual basis, due the 10th day of January and July. The reports shall report on the progress of the SEPs during the previous six months.
4. Rockydale shall submit a written final report on the SEPs, verifying that the SEPs have been completed in accordance with the terms of this Order, and certified either by a Certified Public Accountant or by a responsible corporate officer or owner. Rockydale shall submit the final report and certification to the Department within 37 months of the effective date of the Order.
5. If the SEPs have not or cannot be completed as described in the Order, Rockydale shall notify DEQ in writing no later than 24 months of the effective date of the Order. Such notification shall include:
 - a. An alternate SEP proposal, or
 - b. Payment of the amount specified in Paragraph D.2 as described in Paragraph D.1.
6. Rockydale hereby consents to reasonable access by DEQ or its staff to property or documents under the party’s control, for verifying progress or completion of the SEP.
7. Rockydale shall submit to the Department written verification of the final overall and net project cost of the SEPs in the form of a certified statement itemizing costs, invoices and proof of payment, or similar documentation within 30 days of the project completion date. For the purposes of this submittal, net project costs can be either the actual final net costs or the projected net costs if such projected net costs statement is accompanied by a CPA certification or certification from Rockydale’s Chief Financial Officers concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.

Special Order by Consent

Rockydale Quarries Corporation – Jack’s Mountain Quarry

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8. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

Jerry Ford, Jr., Enforcement Specialist-Senior
Department of Environmental Quality
Blue Ridge Regional Office
3019 Peters Creek Road
Roanoke, VA 24019